



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

March 3, 2016

Dear:

This letter responds to your electronic mail (email) correspondence to the Office of Special Education Programs (OSEP), including messages dated May 19, 2015 to Leticia Braga, Education Program Specialist, and June 3, 2015, July 1, 2015, and October 20, 2015 emails to Melody Musgrove, former OSEP Director. We have provided a summary of your questions and our responses below.

Question 1: Is it permissible for New York to have a State regulation that requires the board of education (Board) to approve/determine services and setting after the child's individualized education program (IEP) is developed by the Committee on Special Education?

Response: There is nothing in Part B of the Individuals with Disabilities Education Act (IDEA) statute or its implementing regulations that prohibits a State from having the regulation you describe, so long as the Board is not permitted to unilaterally change a child's IEP and/or placement. Furthermore, the State must ensure that the Board's actions do not delay or deny the provision of a free appropriate public education (FAPE) to the child. Rather, if the Board determines that the educational program and/or placement proposed by the IEP Team are not appropriate, the State must ensure that a group that includes the appropriate IEP Team members, including the child's parent(s), meets in a timely manner to consider the Board's objections or concerns and to make revisions, if needed, to the IEP and/or placement in order to ensure FAPE is provided to the child. We note that New York's regulations do not permit the Board to unilaterally change a child's IEP and/or placement.

This State regulation is a State-imposed requirement that is not required by Part B of the IDEA (Part B) and its implementing regulations. Under IDEA section 608(a)(2) and its implementing regulation at 34 CFR §300.199(a)(2), each State that receives funds under Part B of the IDEA must identify in writing to local educational agencies (LEAs) located in the State and the Secretary any State rule, regulation, or policy relating to 34 CFR Part 300 as a State-imposed requirement that is not required by Part B of the IDEA and Federal regulations. Therefore, the State must identify in writing to LEAs located in the State and the Secretary that this is a State-imposed requirement that is not required by Part B of the IDEA and Federal regulations.

Question 2: What is the timeline for developing the child's IEP after a determination of eligibility is made?

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

OSEP Response: The IDEA regulation at 34 CFR §300.323(c)(1) requires that a meeting to develop an IEP for a child occur within 30 days of a determination that the child needs special education and related services.

Question 3: Is it permissible for the New York State educational agency (SEA) to redact the names of the hearing officers and district and case numbers when it makes due process findings and decisions available to the public?

OSEP Response: Under 34 CFR §§300.513(d)(2) and 300.514(c)(2), the public agency in the case of a hearing, or the SEA in the case of an appeal, after deleting any personally identifiable information, must make those findings and decisions available to the public. The IDEA defines personally identifiable to mean information that contains: (1) the name of the child, the child's parent, or other family member; (2) the address of the child; (3) a personal identifier, such as the child's social security number or student number; or (4) a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty. See 34 CFR §300.32. Therefore, the State should not be redacting the names of the hearing officers and district and case numbers unless release of such information would result in the release of personally identifiable information.

In some circumstances, the name of the district may result in the release of personally identifiable information. The determination regarding those personal characteristics or other information, such as the name of the district, that would make it possible to identify the child with reasonable certainty, or make the student's identity easily traceable, must be made on an individualized basis and not based on a general policy of disclosure. The public agency must consider the contents of each due process hearing finding and decision to determine which personal characteristics or other information contained therein would make it possible to identify the child with reasonable certainty or make the student's identity easily traceable if disclosed to the school's community or the community at large. In general, factors to consider include, but are not limited to, the size of the district, school and grade and the prevalence and knowledge of the child's personal characteristics and other information (*e.g.*, disability, initials, parent's advocacy work) within the school community and the community at large. In individually weighing these factors, the agency should determine the information or combination of information that would constitute personally identifiable information and remove it from the due process hearing findings and decision prior to its public dissemination. See OSEP's October 13, 2006 Letter to Anderson.¹

Question 4: Is it permissible for New York to require a physician's prescription in order to provide a related service for a child with a disability?

OSEP Response: The IDEA does not require a physician's prescription in order to provide a related service for a child with a disability. The State-imposed requirement you describe that requires a physician's prescription for a related service is not inconsistent with the IDEA, provided: (1) the child's parent does not incur a cost for obtaining the prescription;

¹ A copy of this letter may be found on the U.S. Department of Education's web site: <http://www2.ed.gov/policy/speced/guid/idea/letters/2006-4/anderson101306confident4q2006.pdf>.

and (2) the requirement does not result in a delay in providing a related service that is required for the child to receive FAPE. If you believe that a child has experienced a delay in receiving the related services required by the IEP, you may use any of the dispute resolution procedures available under the IDEA, including requesting mediation under 34 CFR §300.506, filing a due process complaint under 34 CFR §300.507, or filing an IDEA complaint with the State under 34 CFR §§300.151-300.153.

As noted above, and as required by IDEA section 608(a)(2) and its implementing regulation at 34 CFR §300.199(a)(2), the State must identify in writing to LEAs located in the State and the Secretary that this is a State-imposed requirement that is not required by Part B of the IDEA and Federal regulations.

Your correspondence to this office also raised questions about the New York SEA's obligation to honor your request for copies of all impartial hearing decisions from 1985-2015, with the exception of the decisions issued in 2012. We will address this matter in separate correspondence.

Finally, we would like to clarify the role of this office. OSEP is responsible for administering the IDEA. This Federal program provides financial assistance to SEAs, and through SEAs to local school districts, to help meet the unique educational needs of eligible children with one or more of the specified disabilities, as defined at 34 CFR §300.8 of the Federal regulations implementing Part B of the IDEA. You can obtain a copy of the Part B regulations at the following web site: http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title34/34cfr300_main_02.tpl.

We encourage you to communicate with your local and State education officials when you have questions or concerns about the implementation of State-specific requirements pertaining to the education of children with disabilities. For detailed information regarding the implementation of such requirements as well as implementation of the IDEA provisions in the State of New York, you may wish to contact Ms. Patricia Geary, Coordinator, at the New York State Education Department. For your convenience we have provided Ms. Geary's contact information below:

New York State Education Department
Office of Special Education
89 Washington Avenue, Room 309 EB
Albany, New York 12234
Email: speced@nysed.gov
Phone: 518-473-4818

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

We trust that the information provided in this response will be helpful to you in your role as parent and in the support you may provide to other parents in New York.

Sincerely,

/s/ Ruth E. Ryder

Ruth E. Ryder
Acting Director
Office of Special Education Programs

cc: Patricia Geary